

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARILYN CORNELIUS,

ORDER

Plaintiff,

v.

11-CV-00697(A)(M)

INDEPENDENT HEALTH ASSOCIATION,
INC., incorrectly sued herein as INDEPENDENT
HEALTH,

Defendant.

In response to Mr. De Luca's letter dated January 23, 2013 [52], I had attempted to schedule a telephonic conference with the parties for today or tomorrow, in the hope of avoiding unnecessary motion practice. In an e-mail to my law clerk today [53], Ms. Cornelius has advised that she is only available for such a conference on January 31 and February 1 at specific times.


According to Mr. DeLuca's letter, in response to his deposition notice scheduling her deposition for January 28, 2013 at his office, Ms. Cornelius sent him an e-mail stating: "I am not available at all during the months of January or February. Your office is not a convenient location for me . . . I don't feel comfortable, nor would I feel safe at your office".

I wish to remind Ms. Cornelius that, as the plaintiff in this case, it is her obligation to make herself available for a deposition at a reasonable time and location. Absent a truly compelling explanation (which I have yet to hear), I fail to see why she cannot be available for a deposition at some point prior to the end of February, and why Mr. De Luca's office is not a proper location for her deposition.

Therefore, by January 31, 2013 the parties are ordered to communicate with each other and agree upon a date for the deposition, to be held no later than February 22, 2013. Failing that, the defendant may move for appropriate relief, including the dismissal of this action. *See* Fed. R. Civ. P. 37(b)(2)(A)(v): "If a party . . . fails to obey an order to provide or permit discovery . . . the court where the action is pending may issue further just orders. They may include the following: . . . dismissing the action or proceeding in whole or in part".

SO ORDERED.

Dated: January 24, 2013


JEREMIAH J. MCCARTHY
United States Magistrate Judge